

Application No. 10/797,983

**Amendments to the Claims:**

This listing of claims will replace all prior versions, and listings, of claims in the application:

**Listing of Claims:**

Claims 1-6 (cancelled)

7. (currently amended): A yeast culture and capsaicin composition for the preparation of a topical pain treatment comprising:

a fermentation mixture comprising:

a yeast culture;

a *Capsicum sp.* cultivar in water; and

a nutrient mixture; and

an oil, said fermentation mixture layered on said oil to form a discrete layer on said oil so that said oil receives and holds to receive capsaicin and volatile fermentation byproducts from said fermentation mixture, and said oil receiving and holding said capsaicin and volatile fermentation byproducts; and

wherein said oil, being substantially unmixed with said fermentation mixture, is separable from said fermentation mixture for application applicable as a topical pain treatment.

8. (previously presented): The inoculum of claim 7 further comprising a carbohydrate.

9 - 19. (cancelled)

20. (previously presented): The composition of claim 7 further comprising a second nutrient mixture comprising at least one member selected from the group consisting of calcium, magnesium, iron, zinc and a combination thereof.

21. (previously presented): The composition of claim 20 wherein said second nutrient mixture comprises an amount of between approximately 0.001% and approximately 0.01% by weight.

Application No. 10/797,983

22. (previously presented): The composition of claim 7 further comprising a micronutrient mixture.

23. (previously presented): The composition of claim 22 wherein said micronutrient mixture comprises an amount of between approximately 0.0001% and approximately 0.01% by weight.

24. (previously presented): The composition of claim 7 wherein said *Capsicum sp.* cultivar comprises 1 part *Capsicum sp.* cultivar to an amount of between approximately 1 and approximately 120 parts water.

25. (previously presented): The composition of claim 24 wherein said *Capsicum sp.* cultivar comprises 1 part *Capsicum sp.* cultivar to an amount of between approximately 2 and approximately 50 parts water.

26. (previously presented): The composition of claim 25 wherein said *Capsicum sp.* cultivar comprises 1 part *Capsicum sp.* cultivar to an amount of between approximately 5 and approximately 10 parts water.

27. (previously presented): The composition of claim 8 wherein said carbohydrate comprises an amount of between approximately 1% and approximately 40% by weight.

28. (previously presented): The composition of claim 27 wherein said carbohydrate comprises an amount of between approximately 5% and approximately 20% by weight.

29. (previously presented): The composition of claim 28 wherein said carbohydrate comprises an amount of between approximately 10% and approximately 15% by weight.

30. (previously presented): The composition of claim 7 wherein said yeast culture comprises an amount of between approximately 0.11% and approximately 50% by volume.

Application No. 10/797,983

31. (previously presented): The composition of claim 30 wherein said yeast culture comprises an amount of between approximately 1% and approximately 20% by volume.

32. (previously presented): The composition of claim 31 wherein said yeast culture comprises an amount of between approximately 5% and approximately 10% by volume.

33. (previously presented): The composition of claim 7 wherein said nutrient mixture comprises an amount of between approximately 0.1% and approximately 10% by volume.

34. (previously presented): The composition of claim 33 wherein said nutrient mixture comprises an amount of between approximately 1% and approximately 5% by volume.

35. (withdrawn): The fermentation medium of claim 19 wherein said nutrient mixture comprises nitrogen, phosphorus and potassium.

36. (withdrawn): The fermentation medium of claim 35 comprises approximately 20-20-20 nitrogen-phosphorus-potassium.

37. (currently amended): The composition of claim [19] 7 wherein said *Capsicum sp.* comprises *Capsicum chinense*.

Claims 38-82 (Cancelled)

83. (previously presented): The composition of claim 7 wherein a ratio of said *Capsicum sp.* cultivar to said oil is of one part *Capsicum sp.* cultivar to from between approximately 5 parts and approximately 10,000 parts of said oil.

Application No. 10/797,983

84. (currently amended): The inoculum composition of claim 7 wherein said nutrient mixture comprises nitrogen.

85. (withdrawn): The inoculum of claim 7 wherein said nutrient mixture comprises phosphorus.

86. (withdrawn): The inoculum of claim 7 wherein said nutrient mixture comprises potassium.

87. (previously presented): The medium of claim 19 wherein said nutrient mixture comprises nitrogen.

88. (withdrawn): The medium of claim 19 wherein said nutrient mixture comprises phosphorus.

89. (withdrawn): The medium of claim 19 wherein said nutrient mixture comprises potassium.

90. (withdrawn): The medium of claim 19 further comprising manganese.

91. (withdrawn): The medium of claim 19 further comprising cobalt.

92. (withdrawn): The medium of claim 19 further comprising copper.